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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,137	09/25/2003	Todd Martin	A03171US (98799.1)	7548

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GARVEY SMITH NEHRBASS & DOODY, LLC
THREE LAKEWAY CENTER
3838 NORTH CAUSEWAY BLVD., SUITE 3290
METAIRIE, LA 70002

EXAMINER

WALKER, ZAKIYA NICOLE

ART UNIT PAPER NUMBER

3676

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,137

Applicant(s)

MARTIN, TODD

Examiner

Zakiya N. Walker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12152003</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because the term "means" is stated in lines 11 and 12. Correction is required. See MPEP § 608.01(b).
2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 5 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board

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of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 5 and 11 recite the broad recitation "various conditions", and the claim also recites "including temperature, pressure, viscosity," which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al.

Young et al. discloses an apparatus that includes a sub for delivering a gauge down a well bore, comprising: a. a sub body 10, having first and second ends attachable to sections of pipe; b. a chamber 26 formed in the sub body for receiving a gauge therein; and c. at least one port 70 in the wall of the sub body in fluid communication with the chamber to allow fluid around the sub body to flow in and out of the chamber so that fluid conditions can be recorded by the gauge. With respect to depending claims 2-8, the reference teaches the limitations as claimed, including a flow bore 20, a threaded gauge, records various conditions, at least three ports, and a shock absorbing tip 62. With respect to claim 9, the reference discloses a sub apparatus for protecting a gauge being delivered down a well bore, comprising: a. a sub body 10, having first and second ends threadably attachable to sections of pipe above and below the sub apparatus; b. a chamber 26 formed in the sub body; c. a gauge (in 26) receivable into the chamber and secured therein; and d. a plurality of ports 70 formed in the wall of the sub body allowing fluid around the outside of the sub body to flow in and out of the chamber so that fluid conditions can be recorded by the gauge. With respect to depending claims 10-13 and 15, the reference teaches the limitations as claimed, including a threaded gauge, records various conditions, includes a cushion 62, and a flow bore 20. With respect to claim 14, the reference discloses a sub apparatus for protecting a gauge being delivered down a well bore, comprising: a. a sub body 10, having first and second ends threadably attachable to sections of pipe above and below the sub apparatus; b. a flow bore 20 through the sub body for allowing fluid within the sections of pipe to flow through the sub body; c. a chamber 26 formed in the sub body

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for receiving a gauge (in 26) which records conditions within the well bore therein; and
d. a plurality of ports 70 formed in the wall of the sub body allowing fluid around the outside of the sub body to flow in and out of the chamber so that fluid conditions can be recorded by the gauge.

8. Claims 1-7, 9, and 11-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Zillinger.

Zillinger discloses an apparatus that includes a sub for delivering a gauge down a well bore, comprising: a. a sub body 28, having first and second ends attachable to sections of pipe; b. a chamber 54 formed in the sub body for receiving a gauge therein; and c. at least one port 112 in the wall of the sub body in fluid communication with the chamber to allow fluid around the sub body to flow in and out of the chamber so that fluid conditions can be recorded by the gauge. With respect to depending claims 2-7, the reference teaches the limitations as claimed, including a flow bore 34, threaded gauge, records various conditions, and at least three ports. With respect to claim 9, the reference discloses a sub apparatus for protecting a gauge being delivered down a well bore, comprising: a. a sub body 28, having first and second ends threadably attachable to sections of pipe above and below the sub apparatus; b. a chamber 54 formed in the sub body; c. a gauge 24 receivable into the chamber and secured therein; and d. a plurality of ports 112 formed in the wall of the sub body allowing fluid around the outside of the sub body to flow in and out of the chamber so that fluid conditions can be recorded by the gauge. With respect to depending claims 11-13 and 15, the reference teaches the limitations as claimed, including a threaded

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gauge, records various conditions, and a flow bore 34. With respect to claim 14, the reference discloses a sub apparatus for protecting a gauge being delivered down a well bore, comprising: a. a sub body 28, having first and second ends threadably attachable to sections of pipe above and below the sub apparatus; b. a flow bore 34 through the sub body for allowing fluid within the sections of pipe to flow through the sub body; c. a chamber 54 formed in the sub body for receiving a gauge which records conditions within the well bore therein; and d. a plurality of ports 112 formed in the wall of the sub body allowing fluid around the outside of the sub body to flow in and out of the chamber so that fluid conditions can be recorded by the gauge.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zakiya N. Walker whose telephone number is (571) 272-7039. The examiner can normally be reached on Monday-Friday, 8:30 AM-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Zakiya N. Walker
Primary Examiner
Art Unit 3676

ZW
June 22, 2005